

augment the overall rate objectives agreed upon in their discussion agreements. Thus, in addition to market conditions, the structure of complementary authority in agreements within trades further helps carriers achieve their collective objectives, depending on how well they can coordinate and maintain these efforts.

While the use of conferences has subsided under OSRA, the benefits carriers enjoy as a result of their ability to participate in antitrust-exempted agreements under the Shipping Act has clearly not diminished. The developments in carrier agreements under OSRA reinforce the need for the Commission to obtain firsthand information directly from the carriers involved in agreements.

C. The Proposed Rule

To account for the changes that have occurred in carrier agreements since OSRA, and considering the views of carriers, the Commission proposes the following modifications to the Information Form and Monitoring Report regulations and requirements.

1. Information Form Regulations

The proposed rule no longer identifies carrier agreements by specific classes for the purpose of assigning reporting requirements. Instead, section 535.502(a) of the proposed rule would require that all carrier agreements identified in section 535.201(a), except for low market share agreements identified in section 535.311, submit an Information Form when the agreement is filed with the Commission. Agreements with certain authorities that have significant potential to affect competition would be required to submit Information Form data pertaining to the specific authority contained in the agreement.

The current agreement classification regulations in section 535.502 provide procedures for assigning specific reporting requirements to specific types of agreements. Agreements filed at the Commission, however, have evolved since the current classification regulations were implemented, especially under OSRA. Now, multiple or complex forms of authority may be contained in a single agreement that might not neatly fall under one specific agreement type or class. Further, the reporting requirements assigned to a particular type or class of agreement may not adequately address the full authority of the agreement. For instance, the current reporting requirements for Class C agreements do not distinguish between simple operational agreements, such as vessel space charter

arrangements, and the more complex and anticompetitive operational agreements with capacity rationalization authority that include global alliance arrangements.

Section 535.503(b) of the proposed rule addresses these concerns by assigning specific reporting requirements to specific authorities contained in agreements. While no rule can cover all circumstances, the Commission believes that this approach would more directly address the elements of concern within the agreement, *i.e.*, the parties' authority and the concerted activities they may pursue with such authority. Further, the proposed rule would replace the current agreement classification procedures with simpler regulations and clearer instructions.

Section 535.502(b) of the proposed rule would require an Information Form when a modification to an existing agreement is filed that adds the authority to discuss or agree on capacity rationalization, or pricing or pooling authority.⁴⁰ Further, a modification that expands the geographic scope of such authority within an existing agreement would also require an Information Form under section 535.502(c) of the proposed rule. Aside from adding the Information Form requirement for agreements containing capacity rationalization authority, the proposed rule is not likely to increase the number of agreement modifications which would be subject to Information Form requirements. The proposed rule refers to agreement modifications by listing the actual authorities in place of the current agreement class labels. When authority is added or expanded, the competitive impact of the existing agreement is altered, and must be re-examined with a new Information Form.

Section 535.504 of the proposed rule provides waiver procedures whereby carriers may request relief from any of the Information Form requirements. Additional information, however, would be required for the Commission's review of waiver requests. Applications for waiver of the Information Form requirements would have to provide data and information in support of the requested relief along with details on

the agreement or agreement modification that is to be filed with the Commission.

2. Information Form

The proposed rule changes the format of the Information Form. Section 535.503(a) of the proposed rule replaces the current Information Forms for Class A/B and Class C agreements with one form in appendix A of part 535. The form is divided into sections I through V. Section 535.503(b) of the proposed rule would require that agreement parties complete each section of the Information Form applicable to the agreement and the authority contained in the agreement. Sections I and V would apply to all carrier agreements subject to the Information Form requirements.⁴¹ Sections II, III and IV would apply based on the authority contained in the agreement. The Information Form would be made available in electronic format using Microsoft Office 2000 (Word and Excel) that could be downloaded from the Commission's home page. Parties may complete and submit their Information Form in paper format, or in electronic format on diskette or CD-ROM. This procedure will remain available until the Commission develops and implements an electronic filing system for such documents.

a. Section I

As noted, section I of the proposed Information Form would be required from all carrier agreements subject to the Information Form requirements. Section I would require basic information on the following topics: the name of the agreement, narrative statements on the purpose and commercial circumstances relating to the agreement, a list of the parties' other agreement participation within the geographic scope of the filed agreement, and the identification of the authority and provisions contained in the agreement.

Section I requires carriers to supply relevant agreement information to the Commission at the start of the review process. This information would be used in the initial review and analysis of an agreement, and would help to avoid formal requests for additional information which delay the effective date of the agreement. The Commission does not believe that section I would impose any undue burden on carriers because most agreements that fall under

⁴⁰ For ease of reference, the term "pricing or pooling authority" is used herein to identify agreements containing any of the following authorities: (a) The discussion of, or agreement upon, whether on a binding basis under a common tariff or a non-binding basis, any kind of rate or charge; (b) the establishment of a joint service; (c) the pooling or division of cargoes, earnings, or revenues and/or losses; (d) the discussion or exchange of data on vessel-operating costs; and/or (e) the discussion of service contract matters. These authorities are listed in the proposed rule.

⁴¹ Low market share agreements identified in section 535.311 of the proposed rule would be exempted from all Information Form and Monitoring Report requirements unless otherwise specifically instructed by the Commission.